

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

GLEN FOLSOM, )  
                  )  
Petitioner,     )  
                  )  
v.               ) Case No. CIV-05-1240-W  
                  )  
THE STATE OF OKLAHOMA, )  
                  )  
Respondent.     )

**REPORT AND RECOMMENDATION**

Mr. Glen Folsom has filed a motion to appeal to vacate or dismiss all counts. In a subsequent telephone hearing, Mr. Folsom stated that he wanted the Court to construe the motion as a habeas petition. *See Doc. 6.*

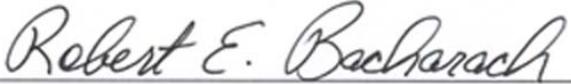
Rather than pay the filing fee, Mr. Folsom filed an application for leave to proceed *in forma pauperis*. The application indicates that Mr. Folsom has \$52.00 in his savings account, and the filing fee is only \$5.00. *See 28 U.S.C. § 1914(a) (2000).* Oklahoma law governing the statutory savings account expressly allows inmates to withdraw funds from the account to pay fees under 28 U.S.C. § 1911, *et seq.* Okla. Stat. tit. 57 § 549(A)(5) (2001); *see also Williams v. Austin*, 890 P.2d 416, 418 (Okla. Ct. App. 1994) (“A prisoner’s savings held by the Department of Corrections may be used to pay fees or costs in filing a civil action.” (citations omitted)). Mr. Folsom concedes that with his savings account, he has adequate funds for the filing fee. *See Doc. 6.* As a result, the undersigned recommends that the Court: (1) deny the application for leave to proceed *in forma pauperis*, (2) order payment

of the filing fee within twenty days, and (3) dismiss the action without prejudice if Mr. Folsom fails to timely pay the filing fee or show good cause for the failure to do so.<sup>1</sup>

The Petitioner is advised of his right to object to this report and recommendation by November 23, 2005. *See* W.D. Okla. Local Civil Rule 72.1(a). If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review over a denial of pauper status in the district court. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation does not dispose of all issues referred to the undersigned.

Entered this 3rd day of November, 2005.

  
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Robert E. Bacharach  
United States Magistrate Judge

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<sup>1</sup> *See* W.D. Okla. LCvR 3.3(e); *see also Cosby v. Meadors*, 351 F.3d 1324 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay), *cert. denied*, 541 U.S. 1035 (2004).